THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO.7432 OF 2004

DATE: 14-12-2005

Between:

Naresh Kumar, s/o Chandan Singh,

Hindu, Aged about 35 years,

Head Constable/Driver No.974280433,

R/o CISF Qrts.No.19/15, CISF Unit,

NFC, ECIL Post, Hyderabad – 62.

… Petitioner

A n d

The Sr.Commandant,

Central Industrial Security Force Unit,

NFC, ECIL Post, Hyderabad – 62

and another.

…. Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITON NO. 7432 OF 2004

ORAL ORDER:

The petitioner is a Head Constable/Driver in the employment of the Central Industrial Security Force (CISF) appointed, as such, in 1997. In respect of a conduct of the petitioner alleged to have occurred on

01-04-2004, a complaint was registered against him in Kushaiguda Police Station being F.I.R.No.81 of 2004 dated 02-04-2004, alleging commission of an offence punishable under Section 379 of the Indian Penal Code. The petitioner is alleged, *inter alia,* to have committed theft of two dummy bullets on the premises of the National Fuel Complex (NFC), Hyderabad.

While so, on 05-04-2004, the first respondent issued a charge memo to the petitioner proposing to hold a departmental enquiry against him for misconduct. The petitioner was charged with having committed gross misconduct and acted in a manner unbecoming of a member of the force. The gravamen of the allegations leading to the charge against the petitioner is also the unauthorized appropriation of two dummy bullets (stainless steel blocks) from the NFC plant area on 01-04-2004. Along with the memorandum of charge, the statement of imputations of misconduct and misbehaviour, the list of documents by which the articles of charge are proposed to be established and the list of witnesses proposed to be examined in the departmental enquiry were also furnished to the petitioner. The petitioner submitted his written statement of defence on 13-04-2004 denying the charge. Thereupon, by the proceedings dated 13-04-2004, the second respondent was appointed as an enquiry officer by the first respondent to enquire into the allegations against the petitioner. Thus, the departmental proceedings against the petitioner was initiated and operationalised.

Asserting that simultaneous conduct of departmental proceedings during the subsistence of an active prosecution is impermissible and prejudices the petitioner's defences in the prosecution, this writ petition is filed seeking a mandamus to interdict the departmental enquiry till the disposition of the criminal proceedings in Cr.No.81 of 2004. Reliance is placed in support of the contention on a decision of the Supreme Court in *CAPT. M.PAUL ANTHONY V. BHARAT GOLD MINES LTD* and another in *HINDUSTAN PETROLEUM CORPORATION LTD. AND ORS. V. SARVESH BERRY.*

In *Hindustan Petroleum's* case (2nd supra), the Supreme Court considered the earlier Judgment in *Capt..M.Paul Anthony's* case (1st supra). The Supreme Court in para '7' in the *Hindustan Petroleum's* case (2nd supra), stated that the position appears well settled that proceedings in criminal case and departmental case can go on simultaneously except in cases where

departmental proceedings and the criminal case are based on the same set of facts and the offences in both the proceedings is common. In the latter set of cases, the Supreme Court observed; an appropriate Court has to decide taking into account the special nature of the case whether simultaneous continuance of both proceedings would be proper. Explaining and setting out the guidelines for exercising the discretion of the Court in appropriate cases of the second nature, the Supreme Court held:

> The purpose of departmental enquiry and prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and contemplated as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence denied under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

In the case on hand, the petitioner is alleged to have committed an offence under Section 379 of the Indian Penal Code by committing theft of two dummy bullets in the NFC. It is a simple charge. No complicated factual and legal issues are involved. In the departmental proceedings impugned herein, the petitioner is accused and in respect of the same event of having committed a

misconduct of acting in a manner unbecoming of a member of the CISF. The mere identity of the events on the basis of which the prosecution and departmental proceedings are based is not the singular indicia for concluding that simultaneous conduct of prosecution and departmental proceedings are proscribed. As pointed out by the Supreme Court in *Hindustan Petroleum's case* (2nd supra), the societal compulsions of prosecution and departmental proceedings are distinct; the sanctions are different; the standards of proof applicable to the two proceedings are distinct and the public or social purposes are also dissimilar.

Sri Narayana Reddy, the learned Central Government Standing Counsel, appearing for the respondents states at the hearing of the writ petition that a charge sheet has been filed in the criminal case and the prosecution is still at a very early stage of process. The event alleged is on 01-04-2004. The allegation is that the petitioner, a member of the CISF – an organization, employed by the NFC to safeguard its properties, has himself violated the sacred trust and has committed the gross misconduct of committing theft of the properties of an institution he was enjoined to protect from external depredation. Such an allegation against a member of the CISF ought not to be put in the cold storage for laid-back investigation and inquiry. The integrity of the CISF, as a disciplined force, in the public sector engaged by public sector institutions to safeguard the institutions and their properties must be maintained. For nurturing such stature it is essential that the employees of the CISF against whom grave allegations of misconduct are made should be swiftly subjected to disciplinary proceedings and these should be brought to expeditious conclusion.

On the aforesaid analysis, this Court finds no infirmity in the initiation or continuance of departmental proceedings against the petitioner by the respondents.

Responding to the apprehension of the petitioner that the respondents would harass the petitioner by not accommodating the departmental enquiry schedules to enable him to effectively pursue his defences in the criminal prosecution, Sri Narayana Reddy, the learned Central Government Standing Counsel states, on instructions, that the departmental proceedings would be scheduled and held in such a manner as to enable the petitioner to pursue

appropriately his defences in the criminal case and the petitioner is free to intimate with the respondents the specific dates on which he is required to be present for the conduct of his case in a criminal prosecution. In view of this assertion on behalf of the respondents, the apprehension of the petitioner appears unfounded.

On the analysis and in view of the circumstances above, this Court finds no merits. The writ petition is dismissed. There shall however be no order as to costs.

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14-12-2005.

Lrkm.